



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**CAUSE NO. 133 OF 2016**

***(Before D. K. N. Marete)***

**WILLIAM MOGAKA.....CLAIMANT**

**VERSUS**

**EAKA FARMERS CO-OPERATIVE SOCIETY.....DEFENDANT**

**RULING**

This is an application by way of Preliminary Objection filed at paragraph 5 of the Reply to Statement of Claim as follows;

*5. The Claimant now states that due to the aforesaid reasons this Honourable Court be pleased to compel the Respondent to pay him his salary arrears for the years between 2000 to 2004 amounting to Kshs.117,382/=.*

The matter came to court variously until the 10th October, 2017 when the parties agreed on a disposal and determination by way of written submissions. The Respondent/Applicant did comply with the consented directions of court whereas the Claimant/Respondent did not.

The Respondent/Applicant in her written application dated 19th October, 2017 submits that this court has no jurisdiction to entertain the claim as presented on grounds that the claim is statutory barred and confronts the provisions of section 90 of the Employment Act, 2007 and also section 4 (1) of the Limitations of Actions Act, Chapter 22, Laws of Kenya.

She sought to rely on the authorities of **E. Torgbor vs. Ladislaus Odongo Ojuok (2015) eKLR** where the court quoted Potter, J. in **Gathoni vs Kenya Co-operative Creameries Ltd Civil Application No.122 of 1981** as follows;

*“The law on limitation is intended to protect defendants against unreasonable delay in bringing of suits against them. The statute expects the intending Plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”*

Further, the respondent sought to forement his case by relying on the authority of **Maria Machocho vs Total (K) Industrial Cause No. 2 of 2012** where Radido, J. quoted with approval in **E. Torgbor vs. Ladislaus Odongo Ojuok, Supra**, in the following terms;

*“ Before the coming into operation of Section 90 of the Employment Act, the statutory Limitation*

*period for causes of action based on breach of Employment contract or contract of service was that provided for contracts in general, in Section 4 (1) of the Limitation of Actions Act, and it was 6 years*

*Section 90 of the Employment Act has now amended the Limitation of Actions Act to specifically provided for a limitation period of three (3) years in actions based on breach of contract of service or arising out of the Employment Act. I now have to determine whether this Court has the jurisdiction to grant leave or extend time in respect to causes of action barred on breach of contract of service or action arising out of the Employment specifically. The precedent in this regard was set out by the Court of Appeal in Divecon Ltd vs Samani (1995 – 1998) I EA at 54 that Section 4 (1) of the Limitation of Actions Act was clear beyond any doubt and that the section meant that no one shall have the right or power to bring an action after the end of six (6) years from the date on which a cause of action accrued, on action founded on contract.*

*The corollary to this is that no court may or shall have the right or power to entertain what cannot be done, namely, an action that is brought in contract six (6) years after the cause of action or any application to extend such time for the bringing of the action.....A perusal of part III shows that its provisions do not apply to actions based on contract. In the light of these clear, statutory Provisions, I would be unacceptable to imply as the learned Judge of the Superior Court did that “The wording of Section 4(1) of the Limitation of Actions Act (Chapter 22) suggests a discretion that can be invoked.”*

This is the legal position and need not be amplified. It speaks for itself.

Like expressed earlier in this ruling, no defence was proffered. I am not even sure whether this would have made a difference.

I am therefore inclined to allow the preliminary objection with orders that each party bears their own costs of the application. The claim therefore stands struck out, dismissed and lost to the claimant.

Delivered, dated and signed this 15th day of November 2017.

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Mr.Nyatundo instructed by M/S Nyatundo & Company Advocates for the Respondent/Applicant.
2. Miss Chelimo instructed by E. M Orina & Company Advocates for the Claimant/Respondent.